



W.P.No.10061 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2023

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.10061 of 2023

V.Kumaresan

.. Petitioner

Vs.

State Bank of India
Sathyamangalam ADB Branch
Rep. By its Branch Manager
No.113, Athani Road
Sathyamangalam
Erode District 638 401.

.. Respondent

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records comprised in the file of the respondent bank in issuing the demand notice dated 24.11.2022 under Section 13(2) of SARFAESI Act, quash the same as illegal only with respect to item II of the schedule property and consequently, restrain the respondent bank to proceed against the item-II of the schedule property being agricultural property.

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For the Petitioner : Mr.B.Jaganathan

For the Respondent : Mr.M.L.Ganesh

ORDER

(Made by the Hon'ble Acting Chief Justice)

This writ petition has been filed challenging the demand notice dated 24.11.2022 issued under Section 13(2) of the SARFAESI Act.

2. On 31.03.2023, learned counsel for the petitioner submitted that when the petitioner has complied with the conditional order dated 08.07.2022 passed in I.A.No.1085 of 2022 in S.A.No.297 of 2022, directing the petitioner to deposit a sum of Rs.12.00 lakh has been complied with and the direction of the Debts Recovery Tribunal, Coimbatore to the respondent not to proceed under the Act is in subsistence, the respondent bank has issued another demand notice dated 24.11.2022, in violation of the order of the Debts Recovery Tribunal.

3. Learned counsel for the petitioner further submitted that the



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respondent bank is attempting to bring the agricultural property for auction in violation of Section 31(i) of the Act, which states that the provisions of the Act will not apply to agricultural land.

4. In view of the fact that when the conditional order passed by the Debts Recovery Tribunal has been complied with, the respondent has issued demand notice under Section 13(2) of the Act despite the direction of the Debts Recovery Tribunal not to proceed under the Act was in subsistence and that the agricultural land cannot be brought for sale as per Section 31(i) of the Act, this Court issued notice to the respondent and directed the Authorised Officer of the respondent bank to be present on 17.04.2023.

5. Accordingly, Mr.D.Parthasarathy, Chief Manager, State Bank of India, SARB was present in Court today.

6. Learned counsel appearing for the respondent bank submitted that the respondent bank has withdrawn the notice dated 25.10.2021 issued under Section 13(2) of the Act and therefore, nothing survives,



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including the possession notice issued under Section 13(4) of the Act.

7. Learned counsel further submitted that the petitioner, though agreed to settle a sum of Rs.42.50 lakh under One Time Settlement by depositing a sum of Rs.2.50 lakh, had not settled the amount and therefore, the respondent bank is entitled to issue demand notice under Section 13(2) of the Act and the same cannot be stated to be issued in violation of the direction of the Debts Recovery Tribunal.

8. We find justification in the submissions made by learned counsel for the respondent bank. When the demand notice dated 25.10.2021 issued under Section 13(2) of the Act has been withdrawn, nothing survives in the possession notice issued under Section 13(4) of the Act.

9. It is not known as to how the respondent bank has issued the demand notice dated 24.11.2022 under Section 13(2) of the Act bringing the agricultural land for auction when Section 31(i) of the Act bars the secured creditor from proceeding against the agricultural



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land. However, learned counsel for the respondent bank submitted that the agricultural land has been mentioned in the notice inadvertently and that the respondent bank would not proceed against the agricultural land.

10. Recording the above submission, the writ petition is disposed of. However, it is made clear that if the respondent bank desires to proceed further, it is for the respondent bank to first move the Debts Recovery Tribunal to recall/vacate the order dated 08.07.2022 directing it not to proceed further. There will be no order as to costs. Consequently, WMP Nos.10104 & 10105 of 2023 are closed.

(T.R., ACJ.) (D.B.C., J.)
17.04.2023

Index : Yes/No
Neutral Citation : Yes/No

kpl

To
The Branch Manager
State Bank of India
Sathyamangalam ADB Branch
No.113, Athani Road
Sathyamangalam, Erode District 638 401.

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T.RAJA, ACJ,
and
D.BHARATHA CHAKRAVARTHY,J

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